

Appl. No.: 09/931,294  
Amdt. dated June 7, 2006  
Reply to Office action of March 7, 2006

### **REMARKS**

Please reconsider the application in view of the above amendments and the following remarks.

#### **In the claims:**

Claims 1-40 are pending in the application. Applicants have amended claims 1 and 23. Applicants have canceled claims 2, 6-11, 19-22, 24, 30 and 32.

As currently amended, claims 1, 12, 23, and 33 are independent claims. The remaining claims depend directly or indirectly from claims 1, 12, 23, and 33.

#### **Rejection(s) under 35 U.S.C. § 102**

Claims 1, 12, 23 and 27 are rejected under 35 U.S.C. §102(b) are rejected as being anticipated by CEMEX's Delivery Management System and Method as evidenced by three references cited by the Examiner. These references are: Reference A – Meyer, Christopher, Role Models (1996); Reference B – Petziner, Thomas et al., The Front Lines (1996) and Reference C – Slywotzky, Andrew, Concrete Solution (2000). The Applicants respectfully traverse the Examiner's assertions.

The cited references are articles that appear to describe the operations of a Mexican company called CEMEX. Although related to the same company and subject matter, the references are separate and distinction articles. 35 U.S.C. 102(b) states that 'a person shall be entitled to a patent unless the invention was patented or described in a printed publication in this country or a foreign. Applicants submit that the cited reference is not one printed publication.

With regard to the Examiner's assertions that the CEMEX system describes the features of claim 1 of the present invention, Applicants assert that the CEMEX system does not describe the step of generating a delivery route for the processed order. None of the cited references describe the generating of a delivery route for a processed order. As described in paragraph [0029] of U.S. patent publication 20030036938 for this invention, the delivery route is determined either jointly by the S&H, the supplier and the business

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taking into consideration the delivery requirements of the client or by any combination jointly or singularly by the three entities. The references discuss tracking the progress of the shipment, but none of the references specifically describe the deliberate creation of a delivery route. The shipper based on the origination of the shipment and the destination of the shipment usually determines delivery routes.

Second, the cited references do not describe the step of: 'generating an alternate delivery destination for the original customer order, the alternative destination being a destination of a received order from a second customer, the second order being substantially the same as the first order or the location from which the customer order originated.' The references generally discuss the redirecting of deliveries as last minute changes occur. However, that is a general redirecting of deliveries in the system, but not a specific description of a specific re-routing of the original customer order to an alternate destination.

Lastly, as currently amended, none of the cited references describe the step of: processing the received delivery order, by recording the information contained in the delivery order in a product delivery database, scheduling the received order with a product supplier, and selecting a shipping and handling entity to ship the product. The CEMEX system does not distinguish between a supplier and a shipper. The present invention makes a distinction between a shipper and handler (S&H), the supplier and the business (customer), for example see paragraph [0029].

Contrary to the examiner's statement that all elements are disclosed in the cited reference, the above mentioned steps of: *generating a delivery route for the processed order; generating an alternate delivery destination for the original customer order; and processing the received delivery order* as described in claim 1 are not, so the rejection is unsupported by the art and should be withdrawn.

With regard to claim 12, the method describes steps that determine a delivery route for the product with the delivery route containing product handover points along the route. The claim further describes a step of recording the transfer of the product order from the product supplier to the shipping and handling entity. In addition, as with claim 1, claim 12 describes the step of: 'generating an alternate delivery destination for the original customer order, the alternative destination being a destination of a received order

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from a second customer, the second order being substantially the same as the first order or the location from which the customer order originated.' As previously mentioned, none of the references describe distinguish the supplier and the shipper. In fact reference C, last paragraph page 1 discusses regional mixing plants, each with its own fleet of trucks, which suggest that the supplier and shipper are the same entity.

Contrary to the examiner's statement that all elements are disclosed in the cited reference, the above mentioned steps of: *determining a delivery route for the product with the delivery route containing product handover points along the route; recording the transfer of the product order from the product supplier to the shipping and handling entity; and generating an alternate delivery destination for the original customer order as described in claim 12* are not, so the rejection is unsupported by the art and should be withdrawn.

With regard to claim 23, the arguments are the same as for claim 1. Claim 23 is a computer program product claim that implements the steps described in claim 1

With regard to claim 33, none of the cited references describe the element of: *an alternative delivery component capable of determining a location of a second order that is substantially the same as the shipped order and generating a delivery route to delivery the original order to the determined location of the second order*. Contrary to the examiner's statement that all elements are disclosed in the cited reference, this step is not so the rejection is unsupported by the art and should be withdrawn.

Although in each of the above-discussed claims, the examiner did cite locations in the references to support the assertions, for the claim elements that the Applicants assert are not described in the references, the cited locations did not describe the elements as claimed by the Applicants. The cited articles are magazine articles that discuss shipping matters and experiences related to CEMEX and their solutions to these shipping matters. The articles do not discuss in detail the components of the CEMEX system. Further, as previously asserted, the cited references do not discuss the certain features of the present invention.

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**Rejection(s) under 35 U.S.C. § 103(a)**

Claims 2-4, 12-16, 24-25, 27-29,31 and 33-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over CEMEX's Delivery Management System and Method as evidenced by three references cited by the Examiner. These references are: Reference A – Meyer, Christopher, Role Models (1996); Reference B – Petziner, Thomas et al., The Front Lines (1996) and Reference C – Slywotzky, Andrew, Concrete Solution (2000). in view of Aklepi et al, U.S. Patent No.: 6,795,823. Applicants traverse the examiner's assertion.

Aklepi determines optimal routing of an article through a network of processing stations. The system and method generate an optimal route based on variable factors such as weather, traffic, and available equipment and can re-calculate said route at every stop based on updated information.

Although both of the cited references have a focus on tracking the delivery of a product, neither reference teaches, mentions or discusses, the scheduling of a received order with a product supplier and selecting a shipping and handling entity to ship the product. As previously stated the descriptions in the references do not distinguish between a supplier and a shipper. As mentioned, fact reference C, last paragraph page 1 discusses regional mixing plants, each with its own fleet of trucks, which suggest that the supplier and shipper are the same entity. This system is opposite of the method and system of the present invention and teaches away from the method and system of the present invention.

To establish a prima facie case of obviousness, one must look at the claim. There needs to be a teaching of each element of the claim in the prior art. Applicant asserts that the cited references do not teach or suggest each element of the claims in claims Applicants present invention. In the claims, neither references singularly or in combination teach or suggest the step scheduling the received order with a product supplier and selecting a shipping and handling entity to ship the product.” Therefore, Applicants submit that the examiner's assertions do not establish a prima facie case of obviousness in the present invention.

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In view of the above, Applicants further submit that all of the pending claims as amended are in condition for allowance. Withdrawal of the rejections and passage to issuance is respectfully requested. Applicant believes this reply to be fully responsive to all outstanding issues and place this application in condition for allowance. If this belief is incorrect, or other issues arise, do not hesitate to contact the undersigned at the below listed telephone number.

No other fees are believed to be due. If Applicant is incorrect in this belief, please apply these charges or any credits, to Deposit Account 09-4447 (Reference Number ASU920010532US1).

Respectfully Submitted,



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